IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 3789 of 2007()

CC.448/2007 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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PETITIONER: ACCUSED

ANNIES, S/O. AZIZ, AGED 29 YEARS,
RESIDING AT KARUTTIKIZHAKKETHIL VEEDU,
PERINGALA MURI, KAYAMKULAM, PIN-690 502.

BY ADV. SRI.A.SHAFEEK

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KAYAMKULAM,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3789 of 2007

Dated this the 19th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 452 and 332 r/w 149 I.P.C. Co-accused who faced trial were found not guilty and acquitted. The petitioner was not available for trial. The case against him (2nd accused) was refiled. The petitioner has now entered appearance before the learned Magistrate. He has been enlarged on bail. The petitioner now prays that the case against him may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason ? The learned counsel for the petitioner only submits that the co-accused have already been found not guilty and acquitted. No other reasons are urged. It is now trite after the decision of the Full Bench in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552] that an absconding co-accused cannot take advantage of the judgment of acquittal secured by the accused who took part in the trial. In the instant case, I note that the prosecution was not able to secure the evidence of the principal witness in the trial against the co-accused as that witness was not available. The advantage of that non availability can be claimed only by the accused who stood trial and not by an absconding co-accused like the petitioner who

was not present before court. In the trial to be held against the petitioner, the prosecution can certainly attempt to secure presence of such witness. In short, the prayer to quash the proceedings cannot be accepted.

3. The learned counsel for the petitioner then submits that there may be a direction for expeditious disposal. He is employed abroad. He has to return to his place of employment. Before that, trial may be permitted to be held.

4. It is for the petitioner to move the learned Magistrate for an out of turn expeditious disposal of the case. The learned Magistrate must certainly consider such request and pass appropriate orders. In case trial against the petitioner could not be completed, certainly the petitioner can, in accordance with law and subject to necessary safeguards, request the learned Magistrate to exempt him from personal appearance. Such application must also be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

5. This Crl.M.C is dismissed, but with the above observations.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-